

Appl. No. 10/749,499  
Amdt. dated July 5, 2006  
Reply to Office Action of April 5, 2006

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### REMARKS

Applicant has carefully reviewed the Office Action mailed April 5, 2006. Applicant respectfully traverses all objections, rejections, and assertions made by the Examiner. The specification and claims 11, 16, and 17 are amended with this response. No new matter is added. Claims 1-25 remain pending.

#### Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. In particular, the Examiner indicated that "longitudinal deflections", as recited in claim 20, is not mentioned in the specification. Applicant believes that the specification and the Figures provide sufficient support for this limitation. However, in the interest of furthering prosecution, the paragraph beginning at line 21 of page 9 of the specification is amended to incorporate the subject matter of originally-filed claim 20. Applicant respectfully submits that this amendment overcomes the objection.

Furthermore, the Examiner indicated that the specification fails to teach an outer layer comprising multiple segments of polymeric material having desired property variations as recited in claim 24. The paragraph beginning at line 13 of page 7 is amended to incorporate the subject matter of originally-filed claim 24. Applicant respectfully submits that this amendment overcomes the objection.

#### Claim Rejections under 35 U.S.C. § 112

Claims 20 and 24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner indicated that the limitations "longitudinal deflection" and "multiple segments" in claims 20 and 24, respectively, have insufficient antecedent basis. Applicant respectfully submits that both claims 20 and 24 use appropriate indefinite articles (and do not use definite articles) so that there does not appear to be any questions related to the use of proper antecedents in these claims. Moreover, the amendments to the specification, detailed above, provide support for these limitations. In light of these remarks, Applicant respectfully submits that this rejection is overcome.

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**Claim Rejections under 35 U.S.C. § 102**

Claims 1-2, 4-5, 7-9, 12-15 and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by McBroom et al. (U.S. Pat. No. 6,277,108). Regarding claims 1-2, 4-5, and 7-9, claim 1 recites a tubular member having a proximal end region and a distal end region, and a radiopaque marker band disposed over the tubular member. McBroom et al. does not teach or disclose these limitations. Instead, McBroom et al. teaches a marker band 330 that is "coupled within the cylindrical portion 318 (of the sheath 300)". McBroom et al. at column 4, lines 29-30; see also Figure 4. The marker band 330 is secured to sheath 300 with material 340, which is not a tubular member. Based on this difference, Applicant respectfully submits that claim 1 is patentable over McBroom et al. Because claims 2, 4-5, and 7-9 depend from claim 1, they are also patentable based on this distinction and because they add significant elements to distinguish them further from the art.

Regarding claims 12-15, claim 12 similarly recites an elongate core member having a proximal end region and a distal end region, and a radiopaque marker band disposed over the core member. McBroom et al. do not teach or disclose these limitations. Accordingly, Applicant respectfully submits that claim 12 is patentable over McBroom et al. Because claims 13-15 depend from claim 12, they are also patentable based on this distinction and because they add significant elements to distinguish them further from the art.

Regarding claim 23, this claim similarly recites an inner tubular member having a proximal region and a distal region, and a radiopaque marker band disposed over a portion of the inner tubular member. McBroom et al. do not teach or disclose these limitations. Accordingly, Applicant respectfully submits that claim 23 is patentable over McBroom et al.

Claims 16-18 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lee et al. (U.S. Pat. No. 6,520,934). Regarding claim 16, this claim is amended to recite that the body section comprises a closed cylinder. Lee et al. do not teach or suggest a body section that is a closed cylinder with first and second slots defined therein that are axially aligned on opposing sides of the body section. Based on this distinction, Applicant respectfully submits that amended claim 16 is patentable over Lee et al.

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Regarding claims 17-18, claim 17 is amended into independent form, and it recites a body section that includes one or more slits in the proximal end region, the distal end region, or both. Lee et al. do not teach or disclose these limitations. Instead, Lee et al. only teach notches that are formed in the "body" (i.e., not the end regions) of a radiopaque marker. Accordingly, Applicant respectfully submits that claim 17 is patentable over Lee et al. Because claim 18 depends from claim 17, it is also patentable for the same reasons and because it adds significant elements to distinguish it further from the art.

**Claim Rejections under 35 U.S.C. § 103**

Claim 3 is rejected 35 U.S.C. § 103(a) as being unpatentable over McBroom et al. The Examiner indicated that McBroom et al. fail to disclose a radiopaque band marker that comprises a plurality of openings that are oval. However, the Examiner indicated that it would have been obvious to recognize that the opening could be oval to provide better visualization. Applicant respectfully disagrees. Nonetheless, the Examiner's argument regarding claim 3 is moot given the above discussion of claim 1. For example, claim 1 is believed to be patentable over McBroom et al. because McBroom et al. fail to teach or disclose, for example, a tubular member having a proximal end region and a distal end region, and a radiopaque marker band disposed over the tubular member. The Examiner's discussion of claim 3 fails to overcome this discrepancy. Accordingly, claim 1 is believed to be patentable over McBroom et al. Because claim 3 depends from claim 1, it is also patentable over McBroom et al. for the same reasons and because it adds significant elements to distinguish it further from the art.

Claims 6 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over McBroom et al. The Examiner indicated that McBroom et al. fail to disclose a radiopaque band marker that comprises a plurality of openings that are offset or staggered or both. However, the Examiner indicated that it would be obvious to recognize that the openings could comprise a staggered or offset configuration. Applicant respectfully disagrees. Nonetheless, the Examiner's argument regarding claims 6 and 10 is moot given the above discussion of claim 1. For example, claim 1 is believed to be patentable over McBroom et al. because McBroom et al. fail to teach or disclose, for example, a tubular member having a proximal end region and a distal end region, and a radiopaque marker band disposed over the tubular member. The

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Examiner's discussion of claims 6 and 10 fails to overcome this discrepancy. Accordingly, claim 1 is believed to be patentable over McBroom et al. Because claims 6 and 10 depend from claim 1, they are also patentable over McBroom et al. for the same reasons and because they add significant elements to distinguish them further from the art.

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over McBroom et al. in view of MacDonald (U.S. Pat. No. 6,210,396). Claim 11, which is now amended into independent form, recites a tubular member having a proximal end region and a distal end region, and a radiopaque marker band disposed over the tubular member. McBroom et al. fail to teach or suggest this limitation. Nothing in McBroom et al. or MacDonald suggests that it would be desirable to combine the cited references to overcome this deficiency. Accordingly, Applicant respectfully submits that claim 11 is patentable over the cited references.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over McBroom et al. in view of Waldhauser et al. (6,945,956). The Examiner indicated that McBroom et al. fail to teach a method of manufacturing a medical device. However, the Examiner indicated that it would be obvious to combine the teachings of Waldhauser et al. with McBroom et al. to arrive at the claimed invention. Applicant respectfully disagrees. Claim 22 recites that the step of disposing a coating over the core member and the marker band includes disposing the coating on the top surface of the marker band, within the slots, and along the bottom surface of the marker band between the marker band and the core member. Disposing a heat shrink tube over a retention sheath to adhere a radiopaque marker band to the wire braid, as disclosed by Waldhauser et al., does not meet this limitation. Instead, Waldhauser et al. teach only that a thin film of the retention sheath is formed over the radiopaque band 62. Waldhauser et al. at column 14, lines 52-57. Thus, even the combination of Waldhauser et al. and McBroom et al. fails to teach or suggest each and every limitation of claim 22. Based on this distinction, Applicant respectfully submits that claim 22 is patentable over the combination of Waldhauser et al. and McBroom et al.

Claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee et al. The Examiner indicated that Lee et al. fail to disclose slots that are staggered. However, the Examiner indicated that it would have been obvious to recognize that the opening could be staggered or offset. Applicant respectfully disagrees. Nonetheless, the Examiner's argument

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regarding claim 19 is moot given the above discussion of claim 17. For example, claim 17 is believed to be patentable over Lee et al. because Lee et al. fail to teach or disclose, for example, a body section that includes one or more slits in the proximal end region, the distal end region, or both. The Examiner's discussion of claim 19 fails to overcome this discrepancy. Accordingly, claim 17 is believed to be patentable over Lee et al. Because claim 19 depends from claim 17, it is also patentable over Lee et al. for the same reasons and because it adds significant elements to distinguish it further from the art.

**Conclusion**

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

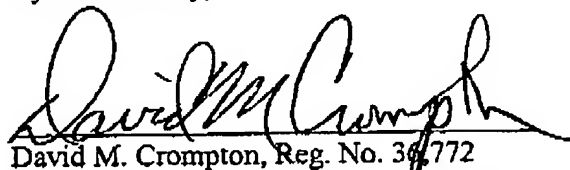
Respectfully submitted,

Richard C. Gunderson

By his Attorney,

Date: \_\_\_\_\_

7/5/06



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